

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12265 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ABDULRASHID ABDULSATTAR SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12265 of 2002
MR AR SHAIKH for Petitioner No. 1
MS HARSHA DEVANI AGP for Respondent No. 1-3
-

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 21/05/2003

ORAL JUDGEMENT

#. The petitioner detenu has moved this court by filing this petition and challenged the order passed by the

Police Commissioner, Ahmedabad City dated 15.11.2002 detaining the petitioner by resorting to the provisions of Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "PASA Act").

#. During hearing Mr. Dave for Mr. Shaikh, learned advocate for the petitioner has taken me through the petition, order of detention, grounds of detention and the material relied upon by the Detaining Authority. The Detaining Authority had as per order dated 15.11.2002, on considering the material placed before him, recorded satisfaction that the petitioner is indulging in prejudicial activities to the public order and recorded satisfaction that the petitioner is 'bootlegger' and his activities are prejudicial to the maintenance of public order. In the grounds of detention, the Detaining Authority had considered one solitary case, in which, the petitioner was involved in a prohibitory case for the offences punishable under Sections 66 (1) (b), 65 (a) (e), 81, 83, 116 (1) (b) registered at Prohibition Police Station vide CR. No. 3504 of 2002 dated 12.11.2002 and the accused was arrested on the very day. In the said case, 312 bottles of foreign liquor was seized worth Rs.1,02,000=00 with one Ambassador car and cash amount of Rs.3200=00. The Detaining Authority has also considered two statements of the witnesses recorded by the police on 13th November, 2002 and said statement was verified by the Detaining Authority on 14th November, 2002, which shows about the involvement of the petitioner in a prejudicial activities. The Detaining Authority had also on verification of the statement of two witnesses, recorded satisfaction that it will be in the public interest not to disclose the names, address and identity of the witnesses. The Detaining Authority had also on the very day passed committal order, detaining the petitioner at Junagadh District jail. The petitioner has annexed the order of detention, committal order, the grounds of detention and other materials, which were placed for consideration before the Detaining Authority. Mr. Dave, learned advocate for the petitioner has while arguing the matter placed in service only one ground while challenging the order of detention in respect of the fact that the order of detention was passed without any application of mind while recording satisfaction of the Detaining Authority. While taking me through the ground no. 5.13, it is contended that the petitioner is in judicial custody and he is likely to apply for bail and that on his being released on bail he will continue to indulge in the alleged illegal activities. It is also contended that there is nothing on record to show that the Detaining Authority has inquired in detail in this

behalf and arrived at such a subjective satisfaction and therefore, the subjective satisfaction of the Detaining Authority is vitiated and thereby, the order of detention deserves to be quashed and set aside.

#. Ms. Devani, learned AGP has supported the order of detention and it is her contention that as seen from the grounds of detention and the satisfaction recorded by the Detaining Authority, it is a fact that as the petitioner detenu was arrested in a prohibition case on 12th November, 2002, the petitioner detenu was in judicial custody and accordingly, while recording satisfaction, the Detaining Authority was aware that the accused is in judicial custody and the petitioner detenu can move an application for bail and the petitioner accused can be released on bail by furnishing security and he will indulge again in such prejudicial activities and accordingly, from the material placed before him, he was satisfied that with a view to prevent such prejudicial activities, it was necessary for him to pass order of detention under the provisions of PASA and accordingly, the order of detention was passed. The Detaining Authority has also filed detail affidavit denying the contentions raised by the petitioner in the petition. In para 12 of the reply, the Detaining Authority has dealt with the contention, which was taken by the petitioner in reply to para 5.13 and it is the say of the Detaining Authority that at the time of passing the order of detention, the petitioner was in judicial custody, therefore, there were very much chances of his indulging in the anti-social activities after his release in the said offence and accordingly, the order of detention was passed and contended that the contentions raised by the petitioner is not tenable and petition requires to be dismissed.

#. Ms. Devani, learned AGP has supported the order of detention and it is her contention that as the Detaining Authority has on considering the material placed before him, recorded satisfaction that the petitioner is acting prejudicial to the maintenance of public order and with a view to prevent him from acting in such manner, the order of detention was passed. It is also her submission that the Detaining Authority was aware at the time of passing order of detention that he is in judicial custody. However, the Detaining Authority has considered that he may release on bail at any time and detenu may indulge in such prejudicial activities and if such prejudicial activities continue, it will affect the public order and she prayed that no case is made out by the petitioner and prayed for dismissal of the petition.

#. During hearing Mr. Dave, learned advocate for the petitioner has placed reliance upon the decision in case of AMRITLAL AND OTHERS VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC p.3675. In para 6, the Supreme Court has while considering the decision in the matter of Binod Singh has observed as under :-

" para 6 :- The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is likelihood of the petitioners being released on bail that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail', which is different from 'likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirement as laid down."

This decision of Apex Court is also relied upon by me in a similar matter, where this court has allowed the petition while disposing of Special Civil Application No. 262 of 2003.

#. In light of the contentions raised and decision of the Apex Court, the order of detention deserves to be quashed and set aside as there is no material with the Detaining Authority about the satisfaction, which he has arrived at that the petitioner will move an application before the competent court and court will release him on bail and he will continue such prejudicial activities further.

#. In light of discussions hereinabove, the petition is allowed. The impugned order dated 15.11.2002 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. The detenu Shri Abdulrashid Abdulsattar Shaikh is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.K. Trivedi, J.)
pallav